would not (unless special facts compelled an opposite view) be dissolved by the operation of the principle in *Krell v. Henry*[3] even though there had been so grave and unforeseen a change of circumstances as to render it impossible for the vendor to fulfil the bargain. Mr. Justice McCardie went to say "If I were to hold otherwise I should create a rule the results of which no man can foresee, and to the operation of which no Judge can satisfactorily fix the limits." The effect of the decision in *Krell v. Henry*[3] was that a collateral though important, circumstance was the basis of the contract between the parties and that when the basis ceased it followed that the contract was dissolved.

I do not see that these cases are applicable or help the plaintiffs' case, although I agree entirely that this contract of insurance was not dissolved by the outbreak of war on 8th December, 1941 and it was subsisting and continued to exist after the surrender on 15th February, 1942 and until 31st August, 1942 after which, the consideration having failed, the contract lapsed and was at an end.

The claim for a declaration, therefore, fails and there will be judgment for the defendants, with costs.

Judgment for the defendants.

Solicitors: *Chong Thutt Pitt & Co.; Drew & Napier.*

LEE v. REX.

[A. Cr. J. (Gordon-Smith Ag. C.J.) August 17, 1948]

[Singapore — Magistrate's Appeal No. 102 of 1948]

Sentence — Factors to be taken into consideration in fixing sentence — Bond for good behaviour.

In fixing sentence, the nature of the offence, the circumstances and the degree of deliberation must be taken into account. In this case, as there was no deliberation and as the accused had a good record of antecedents, age and character, a bond would have been absolutely justified.

MAGISTRATE'S APPEAL.

Appellant in person.

A. V. Winslow (D. P. P.) for the Crown.

Gordon-Smith Ag. C.J. (delivering oral judgment): — I have gone very carefully through this record and was amazed to see that the Chartered Bank should pay one of their clerks $60 a month. Of course, there is a cost of living allowance of $40 but the cost of living within the last few years has gone up three times, and in some instances five times.

In his grounds of judgment the District Judge says:—

"A bond for a first offence of this nature would support a bond for all future offences of this nature that would tend to weaken, for every commercial house employing clerks, the slight safeguard which the law gives. I had to fix a sentence which would be deterrent, but I do not think I fixed a sentence which was excessive."

If commercial houses pay their clerks, particularly those with opportunity of handling money and of altering accounts — if they paid such men a miserable wage like this, then all I can say is that they are putting temptation in the way of their employees. I remember a similar case of a young lad in the Standard Bank of South Africa who was paid £12 a month and the board and accommodation available in the only hotel in the place was £12 a month. Later there was a strike and all employees except the managers and accountants went on strike. That strike resulted in their pay and conditions being materially improved and everybody was in absolute sympathy with them.

I think for an offence of this nature under the circumstances of this case a bond would have been absolutely justified, for in fixing sentence, the nature of the offence, the circumstances and the degree of deliberation must be taken into account. There was no deliberation here. It was a sudden temptation and a sudden weakness. This man has a perfectly good record of antecedents, age and character; otherwise he would not have been taken by the bank, I am quite certain.

I propose to alter the sentence to a bond of $500 in two sureties to be of good behaviour for twelve months.

The appeal is allowed.

Appeal allowed.